



VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

October 25, 2019

P.J.'s Lumber, Inc.  
Attn: Charles Sharp, Vice President  
45055 Fremont Blvd.  
Fremont, California 94538

**Re: Notice of Violation and Intent to File Suit under the Clean Water Act**

Dear Mr. Sharp:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against P.J.'s Lumber, Inc. ("PJ's Lumber") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at its industrial rebar facility located at 45055 Fremont Blvd., Fremont, California 94538 ("Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's mission is to defend San Francisco Bay and holds polluters accountable through patrols on the water, investigations, and strengthening laws that protect the Bay for the benefit of its ecosystems and communities. Baykeeper has more than five thousand members and supporters who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by the Facility's operations.

Baykeeper has serious concerns about the impact of PJ's Lumber's discharge of pollutants from the Facility via stormwater into Mud Slough, Mowry Slough, and South San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "Industrial Stormwater Permit").<sup>1</sup>

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (EPA), and

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<sup>1</sup> On April 1, 2014, the State Water Resources Control Board adopted the 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).



the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to PJ's Lumber of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against PJ's Lumber under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper would like to discuss effective remedies for the violations noticed in this letter. We suggest that you contact us as soon as possible so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

## **I. BACKGROUND**

### **A. The Owner and/or Operator of the Facility**

P.J.'s Lumber, Inc. own and/or operates the Facility. PJ's Lumber is an active California Corporation, and its registered agent is Charles Sharp, 45055 Fremont Blvd., Fremont, California 94538.

As explained herein, PJ's Lumber is liable for violations of the Industrial Stormwater Permit and the Clean Water Act.

### **B. Facility Operations and Stormwater Discharges**

At the Facility, PJ's Lumber operates a rebar and lumber fabrication facility. The Facility conducts rebar fabrication and assembly of rebar products, which includes cutting, welding, and bending rebar. Potential pollutants from Facility operations include total suspended solids (TSS), iron, aluminum, zinc, pH, and nitrite plus nitrate nitrogen (N+N).

PJ's Lumber's Facility is approximately 6 acres, comprised of two buildings which are used for administrative purposes, storage, holding machinery, and a maintenance shop. The Facility has six drainage areas that discharge to Fremont's municipal separate storm sewer system where a pipe connector downstream splits west toward Mowry Slough and south toward Mud Slough before reaching South San Francisco Bay.

### **C. The Facility's Industrial Stormwater Permit Coverage**

On or around February 20, 1998, PJ's Lumber submitted its Notice of Intent (NOI) to be authorized to discharge stormwater from its former location at 42560 Osgood Road, Fremont, California 94539 under the 1997 Permit. On or around February 25, 2005, PJ's Lumber submitted a Notice of Termination changing its permit coverage to the its current location at the Facility. On or around June 10, 2015, PJ's Lumber submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. The NOI identifies the Standard Industrial Classification (SIC) code for the Facility as 3499 (Fabricated Metal, Products NEC) and 4213 (Trucking, Except Local).

Information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

#### **D. The Waters Receiving PJ's Lumber's Stormwater Discharges**

With every significant rainfall event, millions of gallons of polluted stormwater originating from industrial operations such as the Facility pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic dependent wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

The Facility discharges stormwater into South San Francisco Bay via Mud Slough and Mowry Slough (collectively, the "Receiving Waters"). South San Francisco Bay is a water of the United States and is protected by the Clean Water Act. South San Francisco Bay is an ecologically-sensitive waterbody and a defining feature of Northern California. The Bay is an important and heavily-used resource, with special aesthetic and recreational significance for people living in the surrounding communities. However, the Bay's water quality is impaired and continues to decline. The Bay's once-abundant and varied fisheries have been drastically diminished by pollution, and much of the wildlife habitat of the Bay has been degraded.

The Clean Water Act requires that water bodies such as South San Francisco Bay, Mowry Slough, and Mud Slough meet water quality objectives that protect specific "beneficial uses." The beneficial uses of South San Francisco Bay include industrial service supply, commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, water contact recreation, noncontact water recreation, and navigation. The beneficial uses of the Mowry Slough include estuarine habitat, preservation of rare and endangered species, wildlife habitat, water contact recreation, and noncontact water recreation. The beneficial uses of Mud Slough include estuarine habitat, preservation of rare and endangered species, wildlife habitat, water contact recreation, and noncontact water recreation.

Additionally, these receiving waters serve specific ecologically-sensitive habitats and wildlife. Mowry Slough and Mud Slough are tidal sloughs located within the Don Edwards San Francisco Bay National Wildlife Refuge, habitat for the California brown pelican, California clapper rail, California least tern, peregrine falcon, and salt marsh harvest mouse. Additionally, Mowry Slough is a primary pupping site for Pacific Harbor seals, where seal pups await the return of their mothers to nurse. Contaminated stormwater from the Facility adversely affects the water quality of South San Francisco Bay, Mowry Slough, and Mud Slough, and threatens their beneficial uses and ecosystem, which includes habitat for threatened and endangered species.

## **II. PJ'S LUMBER'S VIOLATIONS OF THE CLEAN WATER ACT**

It is unlawful to discharge pollutants to waters of the United States, such as the Receiving Waters, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit is the applicable NPDES permit authorizing and regulating discharges of stormwater from industrial facilities, including the Facility.

Information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. The Facility lacks NPDES permit authorization for any discharges of pollutants into waters of the United States that do not comply with the Industrial Stormwater Permit.

### **A. Discharges in Excess of Technology-Based Effluent Limitations**

The Industrial Stormwater Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (BAT) for toxic pollutants<sup>2</sup> and best conventional pollutant control technology (BCT) for conventional pollutants.<sup>3</sup> 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.<sup>4</sup> The 2015 Permit also includes "Numeric Action Levels" (NALs) derived from these Benchmark values, which indicate the overall pollutant control performance at the Facility. 2015 Permit, Section I.M. (Findings 61-63).

The Facility's self-reported exceedances of Benchmark values over the last five years, identified in Attachment 2 to this letter, indicate that PJ's Lumber has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper notifies PJ's Lumber that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for TSS, iron, aluminum, zinc, pH, and N+N.

The Facility's ongoing discharges of stormwater containing levels of pollutants above Benchmark values demonstrate that PJ's Lumber has not developed and implemented Best Management Practices (BMPs) at the Facility sufficient to meet technology-based effluent limits.

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<sup>2</sup> BAT is defined at 40 C.F.R. § 125.3. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper and zinc, among others. Effluent limitations based on BAT are also used for pollutants that are neither toxic nor conventional, such as metals. 40 CFR § 125.3 (a)(2)(v).

<sup>3</sup> BCT is defined at 40 C.F.R. § 125.3. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

<sup>4</sup> The Benchmark values are part of EPA's Multi-Sector General Permit (MSGP) and can be found at: [https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015\\_finalpermit.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf). The most recent sector-specific Benchmarks can be found at: [https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015\\_part8.pdf](https://www.epa.gov/sites/production/files/2015-10/documents/msgp2015_part8.pdf) ("2015 MSGP"). SIC Code 3499 is covered under Sector AA, Fabricated Metal Products, in the 2015 MSGP.

Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover, capturing and retaining or effectively filtering stormwater before discharge, treating all stormwater prior to discharge, and other similar measures.

PJ's Lumbers' failure to develop and/or implement adequate BMPs to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day the Facility discharges stormwater without meeting BAT and BCT. Baykeeper alleges that PJ's Lumber has discharged stormwater containing excessive levels of pollutants from the Facility to the Receiving Waters during at least every significant local rain event over 0.1 inches in the last five years.<sup>5</sup> Attachment 3 compiles all dates in the last five years when a significant rain event occurred. PJ's Lumber is subject to civil penalties for each of these violations.

### **B. Discharges in Excess of Receiving Water Limitations**

In addition to employing technology-based effluent limitations, the Industrial Stormwater Permit requires dischargers to comply with Receiving Water Limitations. 1997 Permit, Order Part C; 2015 Permit, Section VI. The Receiving Water Limitations prohibit discharges that cause or contribute to an exceedance of applicable water quality standards (WQS). 1997 Permit, Order Part C.2.; 2015 Permit, Section VI.A. Applicable WQS are set forth in the California Toxics Rule (CTR)<sup>6</sup> and Chapter 3 of the Basin Plan.<sup>7</sup> Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes the applicable WQS, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that

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<sup>5</sup> Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.

<sup>6</sup> The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

<sup>7</sup> The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: [http://www.waterboards.ca.gov/sanfranciscobay/basin\\_planning.shtml#2004basinplan](http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan).

adversely affect any designated beneficial use.

The Industrial Stormwater Permit includes additional Receiving Water Limitations that prohibit stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A.2.; 2015 Permit, Sections III.C., VI.C. The Receiving Water Limitations also prohibit stormwater discharges to surface or groundwater that adversely impact human health or the environment. 1997 Permit, Order Part C.1.; 2015 Permit, Section VI.B.

Baykeeper alleges that the Facility's stormwater discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Industrial Stormwater Permit and applicable WQS. These allegations are based on the Facility's self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board. The sampling results indicate that the Facility's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. The Basin Plan notes in particular that San Francisco Bay south of the Dumbarton Bridge, where discharge from the Facility enters the Bay, is a unique, water-quality-limited, hydrodynamic and biological environment. Controlling urban runoff sources such as industrial stormwater is critical to this portion of the Bay.<sup>8</sup> For example, the Facility's sampling results indicate exceedances of numeric WQS for zinc and pH. *See* Attachment 2.

Baykeeper alleges that each day that the Facility has discharged stormwater, the Facility's stormwater has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations. Baykeeper alleges that PJ's Lumber has discharged stormwater exceeding Receiving Water Limitations from the Facility to Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation constitutes a separate violation of the Industrial Stormwater Permit and the CWA, and PJ's Lumber is subject to civil penalties for each of these violations.

### **C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan**

The Industrial Stormwater Permit requires dischargers to develop and implement a legally-adequate Storm Water Pollution Prevention Plan (SWPPP). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1-A.10.; 2015 Permit, Section X. Moreover, the Industrial

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<sup>8</sup> Basin Plan, section 3.3.21.

Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to “ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in this General Permit”).

Based on information available to Baykeeper, PJ’s Lumber has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, PJ Lumber’s past or current SWPPP has not/does not include and/or PJ’s Lumber has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

In addition, the SWPPP fails to include all the information required by the Industrial Stormwater Permit (or the information provided is inaccurate or insufficient), including:

- Pollution prevention team member assignments for implementing the SWPPP;
- Procedures for identifying alternate pollution prevention team members who will perform duties when regular team members are absent;
- Site-specific information for minimum and advanced BMPs descriptions;
- All elements required to be included in the site map, including:
  - Nearby waterways, such as Mowry Slough, Mud Slough, Coyote Creek, or San Francisco Bay;
  - Areas of soil erosion; permeable and non-permeable areas;
  - Municipal storm drain inlets that may receive the facility’s industrial stormwater discharges and non-stormwater discharges (NSWDs);
  - Locations where materials are directly exposed to precipitation;
  - Identification of all waste treatment and disposal areas; and
  - Identification of all dust or particulate generating areas.
- Description of areas protected by containment structures and the corresponding containment capacity;
- Quantity of industrial materials used or the handling of such materials;
- An evaluation of the facility identifying all NSWDs, sources, and drainage areas, including:
  - An evaluation of all drains (inlets and outlets) that identifies connections to

- the stormwater conveyance system;
- Evaluation of how all unauthorized NSWDS have been eliminated; and
- A description of all NSWDS, including the quantity, associated drainage area, and whether it is an authorized or unauthorized NSWDS;
- Descriptions of the facility locations where soil erosion may be caused by industrial activity, contact with stormwater, authorized and unauthorized NSWDS, or run-on from areas surrounding the facility;
- Description of which drainage areas have no exposure to industrial activities;
- A complete assessment of potential pollution sources, including, but not limited to:
  - The effectiveness of existing BMPs to reduce or prevent pollutants in industrial stormwater discharges and authorized NSWDS; and
  - The estimated effectiveness of implementing, to the extent feasible, minimum BMPs to reduce or prevent pollutants in industrial stormwater discharges and authorized NSWDS.

Accordingly, PJ's Lumber has violated the CWA each and every day of the last five (5) years because it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of the Industrial Stormwater Permit, and PJ's Lumber is subject to civil penalties for each of these violations. PJ's Lumber will continue to be in violation every day until it develops and implements an adequate SWPPP.

#### **D. Failure to Comply with Level 1 and Level 2 Exceedance Response Action Requirements**

When the Industrial Stormwater Permit became effective on October 15, 2014, all dischargers were in "Baseline status." 2015 Permit, Section XII.B. A discharger's Baseline status for any given parameter changes to "Level 1 status" if stormwater sampling results indicate an NAL exceedance for that same parameter. 2015 Permit, Section XII.C. Level 1 status commences on July 1 following the reporting year during which the exceedance(s) occurred. 2015 Permit, Section XII.C. By October 1 following commencement of Level 1 status, a discharger is required to: (1) complete an evaluation, with the assistance of a Qualified Industrial Storm Water Practitioner (QISP), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s); and (2) identify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the Industrial Stormwater Permit. 2015 Permit, Section XII.C.1.a.-c. Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, a discharger must evaluate all drainage areas. 2015 Permit, Section XII.C.1.c.

Based upon this Level 1 evaluation, a discharger is required to, as soon as practicable but no later than January 1 following commencement of Level 1 status, revise the SWPPP as necessary and

implement any additional BMPs identified in the evaluation and certify and submit via the Storm Water Multiple Application & Report Tracking System (SMARTS) database a Level 1 Exceedance Response Action (ERA) Report prepared by a QISP that includes a summary of the Level 1 ERA Evaluation and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. 2015 Permit, Section XII.C.2.a.i-ii. A discharger in Level 1 status must also certify and submit via SMARTS the QISP's identification number, name, and contact information (telephone number, e-mail address) no later than January 1 following commencement of Level 1 status. 2015 Permit, Section XII.C.2.a.iii. A discharger's Level 1 status for a parameter will return to Baseline status once the discharger has completed the Level 1 ERA Report and implemented all identified additional BMPs, and results from four consecutive Qualifying Storm Events (QSEs) that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. 2015 Permit, Section XII.C.2.b.

A discharger's Level 1 status for any parameter changes to Level 2 status on July 1 following the reporting year in which NAL exceedance(s) occurred for that same parameter while the discharger is in Level 1. 2015 Permit, Section XII.D. By January 1 following commencement of Level 2 status, the discharger is required to submit via SMARTS a Level 2 ERA Action Plan to address NAL exceedance(s) in the drainage areas where the NAL exceedances occurred. 2015 Permit, Section XII.D.1.a.-e. The Level 2 ERA Action Plan must include a schedule and detailed description of the tasks required to complete the discharger's selected demonstration(s). *Id.* The discharger is required to submit via SMARTS a Level 2 ERA Technical Report by January 1 of the reporting year following the submittal of the Level 2 ERA Action Plan. 2015 Permit, Section XII.D.2.a.-c.

Based on information available to Baykeeper, as of July 1, 2016, PJ's Lumber was in Level 1 status for aluminum, iron, zinc, and total suspended solids based on NAL exceedances during the 2015-2016 reporting period (the annual average for aluminum during the 2015-2016 reporting period was 5.125 mg/L, more than six times the NAL; the annual average for iron during the 2015-2016 reporting period was 12.875 mg/L, over twelve times the NAL; the annual average for zinc during the 2015-2016 reporting period was 0.405 mg/L, almost twice the NAL; the annual average for TSS during the 2015-2016 reporting period was 169.5 mg/L, almost twice the NAL). PJ's Lumber submitted on SMARTS its Level 1 ERA Evaluation and Report for aluminum, iron, zinc, and TSS on or around December 22, 2016, and submitted on SMARTS its updated SWPPP on or around December 28, 2016.

Based on information available to Baykeeper, as of July 1, 2017, PJ's Lumber was in Level 2 status for iron based on NAL exceedances during the 2016-2017 reporting period (the annual average for iron during the 2016-2017 reporting period was 1.17 mg/L exceeding the NAL). As of July 1, 2018, the average samples of aluminum, zinc, and TSS also exceeded the NALs and thus PJ's Lumber entered into Level 2 status for aluminum, zinc, and TSS (the annual average for aluminum during the 2017-2018 reporting period was 3.81 mg/L, five times the NAL; the annual average for zinc during the 2017-2018 reporting period was 0.52 mg/L, two times the NAL; the annual average for TSS during the 2017-2018 reporting period was 118.22 mg/L, exceeding the NAL). The annual average results for iron during the 2017-2018 reporting period continued to exceed NALs (10.32

mg/L, ten times the NAL). PJ's Lumber completed the Level 2 ERA Action Plan for aluminum, iron, and zinc on or around December 15, 2017, and submitted it on SMARTS on or around December 28, 2017. The Level 2 ERA Action Plan was submitted approximately one year late for iron. PJ's Lumber completed a Level 2 ERA Technical Report for aluminum, iron, zinc, and TSS on or around December 14, 2018 and submitted it on SMARTS on or around December 31, 2018. The Level 2 ERA Technical Report was submitted approximately one year late for iron. PJ's Lumber also completed a Level 1 ERA Report for TSS on or around September 20, 2019 and submitted it on SMARTS on or around September 24, 2019.

PJ's Lumber stated in their Level 1 ERA Evaluation and Report that they implemented the following BMPs at the Facility:

- Purchased two Nilfisk 3907 HEPA 460 Volt Industrial Vaccums;
- Increased frequency of daily vacuuming and sweeping all areas where rebar products are handled/fabricated;
- Increased frequency of daily street sweeping driveways and drainage areas throughout the Facility;
- Contracted with Oldcastle Stormwater Solutions for maintenance of FloGard Plus Catch Basin Insert Filters installed at all three storm drain inlets located at the Facility;

The Level 1 ERA Evaluation and Report also stated PJ's Lumber would purchase Filtrexx Filtersoxx with Metalloxx by February 2017 for placement around storm drain inlets at the Facility prior to anticipated storm events.

Despite these statements and the implementation of additional BMPs, PJ's Lumber continued to have exceedances of aluminum, iron, zinc, and TSS, thus indicating that PJ's Lumber failed to identify additional BMPs "necessary to prevent future NAL exceedances at the Facility and to comply with the requirements of [the 2015 Permit]." *See* 2015 Permit, Section XII.C.1.c, XII.C.2.a.ii.

PJ's Lumber's Level 2 ERA Action Plan recommended BMPs for aluminum, iron, zinc, and TSS were also insufficient. The Level 2 ERA Action Plan recommended PJ's Lumber install filter media to target metals and also allow for sampling post-treatment and install Filtrexx Filtersoxx with Metalloxx within and around drainage inlets. BMPs selected for implementation in PJ's Lumber's Level 2 ERA Technical Report include:

- More frequent site sweeping with vacuum sweeper, especially during the dry season;
- Covering drain inlets (Drain Gr8 Guard, or equivalent) during the dry season to prevent pollutants from accumulating in the storm sewer system; and
- Periodic cleaning/jetting of the storm sewer system to prevent pollutant buildup.

Additionally, PJ's Lumber's Level 2 ERA Technical Report lists several additional BMPs which are being evaluated for economic feasibility. The additional BMPs listed in the Level 2 ERA Technical Report are inadequate to reduce pollutant loading as evidenced by PJ's Lumber's continued exceedances for aluminum, iron, TSS and zinc after BMP implementation. *See Attachment 2.*

Accordingly, PJ's Lumber has failed and continues to fail to conduct an adequate Level 1 ERA Evaluation, an adequate Level 1 ERA Report, an adequate Level 2 ERA Action Plan, or an adequate Level 2 ERA Technical Report in compliance with the 2015 Permit. As such, PJ's Lumber is in daily violation of the 2015 Permit. Every day that PJ's Lumber conducts operations at the Facility without an adequate Level 1 ERA evaluation, an adequate Level 1 ERA Report, an adequate Level 2 ERA Action Plan, and/or an adequate Level 2 ERA Technical Report as required by the 2015 Permit is a separate and distinct violation of the 2015 Permit and section 301(a) of the Clean Water Act, 33 U.S.C. section 1311(a). PJ's Lumber has been in daily and continuous violation of the 2015 Permit's Level 1 status ERA requirements for aluminum, TSS, iron, and zinc every day since at least July 1, 2016, the 2015 Permit's Level 2 status ERA requirements for iron every day since at least July 1, 2017, and the 2015 Permit's Level 2 status ERA requirements for aluminum, zinc, and TSS every day since at least July 1, 2018. These violations are ongoing, and Baykeeper will include additional violations when information becomes available. PJ's Lumber is subject to civil penalties for all violations of the Clean Water Act so occurring.

#### **E. Unpermitted Discharges**

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. PJ's Lumber sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." 1997 Permit, Order Part A.1.; 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28).

Because PJ's Lumber has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. section 1311(a). PJ's Lumber is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA occurring in the last five years.

### **III. PERSONS RESPONSIBLE FOR THE VIOLATIONS**

P.J.'s Lumber, Incorporated is the owner and/or operator of the Facility and is the person responsible for the violations at the Facility described above.

**IV. NAME AND ADDRESS OF NOTICING PARTY**

San Francisco Baykeeper, Inc.  
1736 Franklin Street, Suite 800  
Oakland, California 94612  
(510) 735-9700

**V. COUNSEL**

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

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(510) 735-9700

**VI. REMEDIES**

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against PJ's Lumber for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. section 1365(a) and (d), and such other relief as permitted by law. Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. section 1319(d), and 40 C.F.R. section 19.4, against PJ's Lumber in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring between January 12, 2009 and November 2, 2015, and up to \$54,833 per day per violation for violations occurring after November 2, 2015. 33 U.S.C. § 1319(d); 40 C.F.R. §§ 19.1-19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. section 1365(d).

As noted above, Baykeeper would like to meet with you to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,



Nicole C. Sasaki  
Staff Attorney  
San Francisco Baykeeper

Notice of Intent to File Suit

October 25, 2019

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Cc:

Andrew Wheeler, Administrator  
U.S. Environmental Protection Agency  
Mail Code: 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Michael Montgomery, Executive Officer  
Regional Water Quality Control Board  
San Francisco Bay Region  
1515 Clay Street, Suite 1400  
Oakland, California 94612

Mike Stoker, Regional Administrator  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, California 94105

Eileen Sobeck, Executive Director  
State Water Resources Control Board  
1001 I Street  
Sacramento, California 95814

William Barr, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

**Attachment 1: EPA Benchmarks and  
Water Quality Standards for Discharges to Marine Water**

**A. EPA Benchmarks, 2000 and 2015  
Multi-Sector General Permit (MSGP)**

<b>Parameter</b>	<b>Units</b>	<b>Benchmark value</b>	<b>Source</b>
pH	SU	6.0 – 9.0	2015 MSGP
Total Suspended Solids	mg/L	100	2015 MSGP
Oil and Grease	mg/L	15	2000 MSGP
Aluminum Total	mg/L	0.75	2015 MSGP
Iron Total	mg/L	1.0	2015 MSGP
Zinc Total	mg/L	0.09	2015 MSGP

**B. Water Quality Standards (Basin Plan, Table 3-3)**

<b>Parameter</b>	<b>Units</b>	<b>WQS Value</b>
pH	SU	6.5 – 8.5
Zinc	mg/L	0.09

## Attachment 2: Table of Exceedances for P.J.'s Lumber, Inc.

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sampling Location	Date of Sample Collection	Parameter	Result	Units
2015-2016	D1	1/19/16	Aluminum, Total	6.5	mg/L
2015-2016	D2	1/19/16	Aluminum, Total	2.9	mg/L
2015-2016	D1	1/19/16	Iron, Total	13	mg/L
2015-2016	D2	1/19/16	Iron, Total	8	mg/L
2015-2016	D1	1/19/16	Total Suspended Solids (TSS)	210	mg/L
2015-2016	D2	1/19/16	Zinc, Total	0.57	mg/L
2015-2016	D1	1/19/16	Zinc, Total	0.26	mg/L
2015-2016	D1	4/22/16	Aluminum, Total	6.2	mg/L
2015-2016	D2	4/22/16	Aluminum, Total	4.9	mg/L
2015-2016	D1	4/22/16	Iron, Total	9.5	mg/L
2015-2016	D2	4/22/16	Iron, Total	21	mg/L
2015-2016	D1	4/22/16	Total Suspended Solids (TSS)	200	mg/L
2015-2016	D2	4/22/16	Total Suspended Solids (TSS)	170	mg/L
2015-2016	D1	4/22/16	Zinc, Total	0.31	mg/L
2015-2016	D2	4/22/16	Zinc, Total	0.48	mg/L
2016-2017	D1	2/16/17	Aluminum, Total	1.07	mg/L
2016-2017	D2	2/16/17	Aluminum, Total	0.904	mg/L
2016-2017	D3/D4	2/16/17	Aluminum, Total	0.883	mg/L
2016-2017	D1	2/16/17	Iron, Total	1.28	mg/L
2016-2017	D2	2/16/17	Iron, Total	1.06	mg/L
2016-2017	D3/D4	2/16/17	Iron, Total	1.24	mg/L
2016-2017	D3/D4	2/16/17	pH	6.3	mg/L
2017-2018	D2	1/8/18	Aluminum, Total	1.9	mg/L
2017-2018	D3	1/8/18	Aluminum, Total	4.6	mg/L
2017-2018	D4	1/8/18	Aluminum, Total	1.4	mg/L
2017-2018	D2	1/8/18	Iron, Total	3.9	mg/L
2017-2018	D3	1/8/18	Iron, Total	7.2	mg/L
2017-2018	D4	1/8/18	Iron, Total	2.5	mg/L
2017-2018	D2	1/8/18	Zinc, Total	0.28	mg/L
2017-2018	D3	1/8/18	Zinc, Total	1.3	mg/L

2017-2018	D4	1/8/18	Zinc, Total	0.24	mg/L
2017-2018	D2	3/1/18	Aluminum, Total	2.9	mg/L
2017-2018	D3	3/1/18	Aluminum, Total	13	mg/L
2017-2018	D4	3/1/18	Aluminum, Total	4	mg/L
2017-2018	D2	3/1/18	Iron, Total	14	mg/L
2017-2018	D3	3/1/18	Iron, Total	31	mg/L
2017-2018	D4	3/1/18	Iron, Total	12	mg/L
2017-2018	D2	3/1/18	Total Suspended Solids (TSS)	140	mg/L
2017-2018	D3	3/1/18	Total Suspended Solids (TSS)	380	mg/L
2017-2018	D4	3/1/18	Total Suspended Solids (TSS)	110	mg/L
2017-2018	D2	3/1/18	Zinc, Total	0.28	mg/L
2017-2018	D3	3/1/18	Zinc, Total	0.89	mg/L
2017-2018	D4	3/1/18	Zinc, Total	0.41	mg/L
2017-2018	D2	4/6/18	Aluminum, Total	1.2	mg/L
2017-2018	D3	4/6/18	Aluminum, Total	3.9	mg/L
2017-2018	D4	4/6/18	Aluminum, Total	1.4	mg/L
2017-2018	D2	4/6/18	Iron, Total	3.5	mg/L
2017-2018	D3	4/6/18	Iron, Total	13	mg/L
2017-2018	D4	4/6/18	Iron, Total	5.8	mg/L
2017-2018	D3	4/6/18	Total Suspended Solids (TSS)	200	mg/L
2017-2018	D3	4/6/18	Zinc, Total	0.79	mg/L
2017-2018	D2	4/6/18	Zinc, Total	0.25	mg/L
2017-2018	D4	4/6/18	Zinc, Total	0.22	mg/L
2018-2019	D2	11/21/18	Aluminum, Total	2.52	mg/L
2018-2019	D3	11/21/18	Aluminum, Total	3.31	mg/L
2018-2019	D4	11/21/18	Aluminum, Total	4.99	mg/L
2018-2019	D2	11/21/18	Iron, Total	6.16	mg/L
2018-2019	D3	11/21/18	Iron, Total	8.46	mg/L
2018-2019	D4	11/21/18	Iron, Total	11.2	mg/L
2018-2019	D2	11/21/18	Nitrite Plus Nitrate (as N)	2.9	mg/L
2018-2019	D3	11/21/18	Nitrite Plus Nitrate (as N)	7.69	mg/L
2018-2019	D4	11/21/18	Nitrite Plus Nitrate (as N)	7.43	mg/L
2018-2019	D2	11/21/18	Total Suspended Solids (TSS)	125	mg/L
2018-2019	D3	11/21/18	Total Suspended Solids (TSS)	419	mg/L
2018-2019	D4	11/21/18	Total Suspended Solids (TSS)	523	mg/L
2018-2019	D2	11/21/18	Zinc, Total	1.64	mg/L
2018-2019	D3	11/21/18	Zinc, Total	2.84	mg/L
2018-2019	D4	11/21/18	Zinc, Total	4.24	mg/L
2018-2019	D2	1/15/19	Aluminum, Total	4.43	mg/L

2018-2019	D3	1/15/19	Aluminum, Total	5.38	mg/L
2018-2019	D4	1/15/19	Aluminum, Total	3.71	mg/L
2018-2019	D2	1/15/19	Iron, Total	9.78	mg/L
2018-2019	D3	1/15/19	Iron, Total	11	mg/L
2018-2019	D4	1/15/19	Iron, Total	9.34	mg/L
2018-2019	D2	1/15/19	Total Suspended Solids (TSS)	461	mg/L
2018-2019	D3	1/15/19	Total Suspended Solids (TSS)	960	mg/L
2018-2019	D4	1/15/19	Total Suspended Solids (TSS)	324	mg/L
2018-2019	D2	1/15/19	Zinc, Total	1.44	mg/L
2018-2019	D3	1/15/19	Zinc, Total	3.95	mg/L
2018-2019	D4	1/15/19	Zinc, Total	1.19	mg/L
2018-2019	D2	3/20/19	Aluminum, Total	1.14	mg/L
2018-2019	D3	3/20/19	Aluminum, Total	1.21	mg/L
2018-2019	D4	3/20/19	Aluminum, Total	0.778	mg/L
2018-2019	D2	3/20/19	Iron, Total	3.32	mg/L
2018-2019	D3	3/20/19	Iron, Total	3.09	mg/L
2018-2019	D4	3/20/19	Iron, Total	2.49	mg/L
2018-2019	D2	3/20/19	Total Suspended Solids (TSS)	110	mg/L
2018-2019	D3	3/20/19	Total Suspended Solids (TSS)	260	mg/L
2018-2019	D4	3/20/19	Total Suspended Solids (TSS)	114	mg/L
2018-2019	D2	3/20/19	Zinc, Total	0.448	mg/L
2018-2019	D3	3/20/19	Zinc, Total	0.906	mg/L
2018-2019	D4	3/20/19	Zinc, Total	0.424	mg/L

### Attachment 3: Alleged Dates of Exceedances by P.J.'s Lumber, Inc. October 25, 2014 to October 25, 2019

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; Fremont, California station, GHCND: USC00043244 when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2014	2015	2016	2017	2018	2019
10/25	02/06	01/04	01/03	01/03	01/06
10/31	02/07	01/05	01/04	01/04	01/07
11/13	02/08	01/06	01/05	01/06	01/16
11/21	02/09	01/08	01/07	01/08	01/17
11/22	03/01	01/13	01/08	01/09	01/21
11/29	03/23	01/16	01/09	01/19	01/31
11/30	04/07	01/17	01/10	01/22	02/02
12/02	04/08	01/18	01/11	01/25	02/03
12/03	04/25	01/19	01/12	02/26	02/04
12/06	05/15	01/22	01/18	02/27	02/05
12/11	06/10	01/23	01/19	03/01	02/08
12/12	11/02	01/30	01/20	03/02	02/10
12/15	11/09	02/18	01/21	03/03	02/13
12/17	11/15	03/04	01/22	03/13	02/14
12/18	11/24	03/05	01/23	03/14	02/15
12/19	11/25	03/06	02/03	03/16	02/16
12/20	12/03	03/07	02/06	03/20	02/17
	12/10	03/08	02/07	03/21	02/27
	12/13	03/11	02/08	03/22	03/02
	12/19	03/12	02/09	04/06	03/06
	12/21	03/13	02/10	04/07	03/10
	12/22	03/14	02/16	04/12	03/20
	12/24	03/21	02/17	04/16	03/23
	12/28	03/22	02/18	11/21	03/26
		04/09	02/20	11/23	03/27
		04/10	02/21	11/24	04/02
		04/22	02/22	11/27	04/16
		05/06	03/05	11/28	05/16
		10/14	03/06	11/29	05/18
		10/16	03/21	12/01	05/19
		10/28	03/22	12/05	05/26
		11/01	03/24	12/16	09/16
		11/20	04/07	12/17	
		11/26	04/08	12/24	
		11/27	04/13	12/25	
		12/08	04/16		
		12/10	04/18		
		12/15	04/20		
		12/16	09/12		

		12/23	10/20		
			11/04		
			11/14		
			11/16		
			11/27		
			12/20		